

Adopted	Rejected
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## COMMITTEE REPORT

YES:	9
NO:	4

### MR. SPEAKER:

*Your Committee on Labor and Employment, to which was referred Senate Bill 389, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1       Page 1, line 5, after "shall" insert ",".
- 2       Page 1, line 5, reset in roman "as".
- 3       Page 1, line 6, reset in roman "liquidated damages for such failure,".
- 4       Page 1, line 8, delete "." and insert ",".
- 5       Page 1, line 8, reset in roman "not exceeding".
- 6       Page 1, line 9, delete "double the amount of wages due," and insert
- 7       "double the amount of wages due.".
- 8       Page 1, line 15, after "wages." insert "**The deduction is limited to**
- 9       **the lesser of:**
- 10       **(1) twenty-five percent (25%) of the employee's disposable**
- 11       **earnings for that week; or**
- 12       **(2) the amount by which the employee's disposable earnings**
- 13       **for that week exceed thirty (30) times the federal minimum**
- 14       **hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the**
- 15       **time the earnings are payable.**
- 16       **In the case of earnings for a pay period other than a week, the**

earnings must be computed upon a multiple of the federal minimum hourly wage equivalent to thirty (30) times the federal minimum hourly wage as prescribed in this section."

Page 2, line 2, delete "wages," and insert "**wages and any damages as provided in subsection (a),**".

Page 2, delete lines 11 through 42.

Delete page 3.

Page 4, delete lines 1 through 3.

Page 4, line 4, delete "IC 22-5-6" and insert "IC 22-5-6.2".

Page 4, line 7, delete "6." and insert "**6.2.**".

Page 4, between lines 16 and 17, begin a new paragraph and insert:

"SECTION 3. IC 32-28-3-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. As used in this chapter, "fringe benefits and withholdings" means compensation due an employee employed in the construction trades under a written contract for benefits in addition to wages, including:**

(1) holiday pay;

(2) time off for:

(A) sickness or injury; or

(B) personal reasons or vacation;

(3) bonus pay;

(4) authorized expenses incurred during the course of employment; and

(5) contributions due to or on behalf of an employee.

SECTION 4. IC 32-28-3-1, AS ADDED BY P.L.101-2002, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) A contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

(1) the erection, alteration, repair, or removal of:

(A) a house, mill, manufactory, or other building; or

(B) a bridge, reservoir, system of waterworks, or other structure; or

(2) the construction, alteration, repair, or removal of a walk or sidewalk located on the land or bordering the land, a stile, a well,

1 a drain, a drainage ditch, a sewer, or a cistern; or

2 (3) any other earth moving operation;

3 may have a lien as set forth in this section.

4 (b) A person described in subsection (a) may have a lien separately  
5 or jointly upon the:

6 (1) house, mill, manufactory, or other building, bridge, reservoir,  
7 system of waterworks, or other structure, sidewalk, walk, stile,  
8 well, drain, drainage ditch, sewer, cistern, or earth:

9 (A) that the person erected, altered, repaired, moved, or  
10 removed; or

11 (B) for which the person furnished materials or machinery of  
12 any description; and

13 (2) on the interest of the owner of the lot or parcel of land:

14 (A) on which the structure or improvement stands; or

15 (B) with which the structure or improvement is connected;

16 to the extent of the value of any labor done, **including fringe benefits**  
17 **and withholdings**, or the material furnished, or both, including any use  
18 of the leased equipment and tools.

19 (c) All claims for wages, **fringe benefits and withholdings, or both**  
20 **wages and fringe benefits and withholdings** of mechanics and  
21 laborers employed in or about a shop, mill, wareroom, storeroom,  
22 manufactory or structure, bridge, reservoir, system of waterworks or  
23 other structure, sidewalk, walk, stile, well, drain, drainage ditch,  
24 cistern, or any other earth moving operation shall be a lien on all the:

25 (1) machinery;

26 (2) tools;

27 (3) stock;

28 (4) material; or

29 (5) finished or unfinished work;

30 located in or about the shop, mill, wareroom, storeroom, manufactory  
31 or other building, bridge, reservoir, system of waterworks, or other  
32 structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer,  
33 cistern, or earth used in a business.

34 (d) If the person, firm, limited liability company, or corporation  
35 described in subsection (a) is in failing circumstances, the claims  
36 described in this section shall be preferred debts whether a claim or  
37 notice of lien has been filed.

38 (e) Subject to subsection (f), a contract for the construction,

- 1 alteration, or repair of:
- 2 (1) a Class 2 structure (as defined in IC 22-12-1-5);
- 3 (2) an improvement on the same real estate auxiliary to a Class 2
- 4 structure (as defined in IC 22-12-1-5); or
- 5 (3) property that is:
- 6 (A) owned, operated, managed, or controlled by a:
- 7 (i) public utility (as defined in IC 8-1-2-1);
- 8 (ii) municipally owned utility (as defined in IC 8-1-2-1);
- 9 (iii) joint agency (as defined in IC 8-1-2.2-2);
- 10 (iv) rural electric membership corporation formed under
- 11 IC 8-1-13-4;
- 12 (v) rural telephone cooperative corporation formed under
- 13 IC 8-1-17; or
- 14 (vi) not-for-profit utility (as defined in IC 8-1-2-125);
- 15 regulated under IC 8; and
- 16 (B) intended to be used and useful for the production,
- 17 transmission, delivery, or furnishing of heat, light, water,
- 18 telecommunications services, or power to the public;
- 19 may include a provision or stipulation in the contract of the owner and
- 20 principal contractor that a lien may not attach to the real estate,
- 21 building, structure or any other improvement of the owner.
- 22 (f) A contract containing a provision or stipulation described in
- 23 subsection (e) must meet the requirements of this subsection to be valid
- 24 against subcontractors, mechanics, journeymen, laborers, or persons
- 25 performing labor upon or furnishing materials or machinery for the
- 26 property or improvement of the owner. The contract must:
- 27 (1) be in writing;
- 28 (2) contain specific reference by legal description of the real
- 29 estate to be improved;
- 30 (3) be acknowledged as provided in the case of deeds; and
- 31 (4) be filed and recorded in the recorder's office of the county in
- 32 which the real estate, building, structure, or other improvement is
- 33 situated not more than five (5) days after the date of execution of
- 34 the contract.
- 35 A contract containing a provision or stipulation described in subsection
- 36 (e) does not affect a lien for labor, material, or machinery supplied
- 37 before the filing of the contract with the recorder.
- 38 (g) Upon the filing of a contract under subsection (f), the recorder

1 shall:

2 (1) record the contract at length in the order of the time it was  
3 received in books provided by the recorder for that purpose;

4 (2) index the contract in the name of the:

5 (A) contractor; and

6 (B) owner;

7 in books kept for that purpose; and

8 (3) collect a fee for recording the contract as is provided for the  
9 recording of deeds and mortgages.

10 (h) A person, firm, partnership, limited liability company, or  
11 corporation that sells or furnishes on credit any material, labor, or  
12 machinery for the alteration or repair of an owner occupied single or  
13 double family dwelling or the appurtenances or additions to the  
14 dwelling to:

15 (1) a contractor, subcontractor, mechanic; or

16 (2) anyone other than the occupying owner or the owner's legal  
17 representative;

18 must furnish to the occupying owner of the parcel of land where the  
19 material, labor, or machinery is delivered a written notice of the  
20 delivery or work and of the existence of lien rights not later than thirty  
21 (30) days after the date of first delivery or labor performed. The  
22 furnishing of the notice is a condition precedent to the right of  
23 acquiring a lien upon the lot or parcel of land or the improvement on  
24 the lot or parcel of land.

25 (i) A person, firm, partnership, limited liability company, or  
26 corporation that sells or furnishes on credit material, labor, or  
27 machinery for the original construction of a single or double family  
28 dwelling for the intended occupancy of the owner upon whose real  
29 estate the construction takes place to a contractor, subcontractor,  
30 mechanic, or anyone other than the owner or the owner's legal  
31 representatives must:

32 (1) furnish the owner of the real estate:

33 (A) as named in the latest entry in the transfer books described  
34 in IC 6-1.1-5-4 of the county auditor; or

35 (B) if IC 6-1.1-5-9 applies, as named in the transfer books of  
36 the township assessor;

37 with a written notice of the delivery or labor and the existence of  
38 lien rights not later than sixty (60) days after the date of the first

1 delivery or labor performed; and

2 (2) file a copy of the written notice in the recorder's office of the  
3 county not later than sixty (60) days after the date of the first  
4 delivery or labor performed.

5 The furnishing and filing of the notice is a condition precedent to the  
6 right of acquiring a lien upon the real estate or upon the improvement  
7 constructed on the real estate.

8 (j) A lien for material or labor in original construction does not  
9 attach to real estate purchased by an innocent purchaser for value  
10 without notice of a single or double family dwelling for occupancy by  
11 the purchaser unless notice of intention to hold the lien is recorded  
12 under section 3 of this chapter before recording the deed by which the  
13 purchaser takes title.

14 SECTION 5. IC 32-28-3-3, AS ADDED BY P.L.2-2002, SECTION  
15 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
16 2003]: Sec. 3. (a) Except as provided in subsection (b), a person who  
17 wishes to acquire a lien upon property, whether the claim is due or not,  
18 must file in duplicate a sworn statement and notice of the person's  
19 intention to hold a lien upon the property for the amount of the claim:

20 (1) in the recorder's office of the county; and

21 (2) not later than ninety (90) days after performing labor or  
22 furnishing materials or machinery described in section 1 of this  
23 chapter.

24 The statement and notice of intention to hold a lien may be verified and  
25 filed on behalf of a client by an attorney registered with the clerk of the  
26 supreme court as an attorney in good standing under the requirements  
27 of the supreme court.

28 (b) This subsection applies to a person that performs labor or  
29 furnishes materials or machinery described in section 1 of this chapter  
30 related to a Class 2 structure (as defined in IC 22-12-1-5) or an  
31 improvement on the same real estate auxiliary to a Class 2 structure (as  
32 defined in IC 22-12-1-5). A person who wishes to acquire a lien upon  
33 property, whether the claim is due or not, must file in duplicate a sworn  
34 statement and notice of the person's intention to hold a lien upon the  
35 property for the amount of the claim:

36 (1) in the recorder's office of the county; and

37 (2) not later than sixty (60) days after performing labor or  
38 furnishing materials or machinery described in section 1 of this

1 chapter.

2 The statement and notice of intention to hold a lien may be verified and  
3 filed on behalf of a client by an attorney registered with the clerk of the  
4 supreme court as an attorney in good standing under the requirements  
5 of the supreme court.

6 (c) A statement and notice of intention to hold a lien filed under this  
7 section must specifically set forth:

8 (1) the amount claimed, **including any fringe benefits and**  
9 **withholdings;**

10 (2) the name and address of the claimant;

11 (3) the owner's:

12 (A) name; and

13 (B) latest address as shown on the property tax records of the  
14 county; and

15 (4) the:

16 (A) legal description; and

17 (B) street and number, if any;

18 of the lot or land on which the house, mill, manufactory or other  
19 buildings, bridge, reservoir, system of waterworks, or other  
20 structure may stand or be connected with or to which it may be  
21 removed.

22 The name of the owner and legal description of the lot or land will be  
23 sufficient if they are substantially as set forth in the latest entry in the  
24 transfer books described in IC 6-1.1-5-4 of the county auditor or, if  
25 IC 6-1.1-5-9 applies, the transfer books of the township assessor at the  
26 time of filing of the notice of intention to hold a lien.

27 (d) The recorder shall:

28 (1) mail, first class, one (1) of the duplicates of the statement and  
29 notice of intention to hold a lien to the owner named in the  
30 statement and notice not later than three (3) business days after  
31 recordation;

32 (2) post records as to the date of the mailing; and

33 (3) collect a fee of two dollars (\$2) from the lien claimant for each  
34 statement and notice that is mailed.

35 The statement and notice shall be addressed to the latest address of the  
36 owner as specifically set out in the sworn statement and notice of the  
37 person intending to hold a lien upon the property.

38 SECTION 6. IC 32-28-3-9, AS ADDED BY P.L.2-2002, SECTION

13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) This section applies to a:

- (1) subcontractor;
- (2) lessor leasing construction and other equipment and tools, regardless of whether an operator is also provided by the lessor;
- (3) journeyman; or
- (4) laborer;

employed or leasing any equipment or tools used by the lessee in erecting, altering, repairing, or removing any house, mill, manufactory or other building, or bridge, reservoir, system of waterworks, or other structure or earth moving, or in furnishing any material or machinery for these activities.

(b) Except as provided in section 12 of this chapter, in order to acquire and hold a lien, a person described in subsection (a) must give to the property owner, or if the property owner is absent, to the property owner's agent, written notice particularly setting forth the amount of the person's claim (**including any fringe benefits and withholdings**) and services rendered for which:

- (1) the person's employer or lessee is indebted to the person; and
- (2) the person holds the property owner responsible.

(c) Subject to subsections (d) and (e), the property owner is liable for the person's claim.

(d) The property owner is liable to a person described in subsection (a) for not more than the amount that is due and may later become due from the owner to the employer or lessee.

(e) A person described in subsection (a) may recover the amount of the person's claim if, after the amounts of other claims that have priority are subtracted from the amount due from the property owner to the employer or lessee, the remainder of the amount due from the property owner to the employer or lessee is sufficient to pay the amount of the person's claim.

(f) This section applies to a person described in subsection (a) who gives written notice, to the property owner or, if the property owner is absent, to the owner's agent, before labor is performed or materials or machinery is furnished. The notice must particularly set forth the amount of:

- (1) labor the person has contracted to perform; or
- (2) materials or machinery the person has contracted to furnish;



for the employer or lessee in erecting, altering, repairing, or removing any of the buildings or other structures described in subsection (a). A person described in subsection (a) has the same rights and remedies against the property owner for the amount of the labor performed by the person or materials or machinery furnished by the person after the notice is given, as are provided in this chapter for persons who serve notice after performing the labor or furnishing the materials or machinery.

(g) If an action is brought against a property owner under this section, all subcontractors, equipment lessors leasing equipment, journeymen, and laborers who have:

- (1) performed labor or furnished materials or machinery; and
- (2) given notice under this section;

may become parties to the action. If, upon final judgment against the property owner the amount recovered and collected is not sufficient to pay the claimants in full, the amount recovered and collected shall be divided among the claimants pro rata.

SECTION 7. IC 32-28-3-12, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) This section applies to a person who:

- (1) performs work or labor such as:

- (A) grading;
- (B) building embankments;
- (C) making excavations for track;
- (D) building:
  - (i) bridges;
  - (ii) trestlework;
  - (iii) works of masonry;
  - (iv) fencing; or
  - (v) other structures; or
- (E) performs work of any kind;

in the construction or repair of a railroad or part of a railroad in Indiana; or

- (2) furnishes material for:

- (A) a bridge, trestlework, work of masonry, fence, or other structure; or
- (B) use in the construction or repair of a railroad or part of a railroad;

1 in Indiana.

2 (b) The work, labor, or material described in subsection (a) may be  
3 provided under a contract:

4 (1) with the railroad corporation building, repairing, or owning  
5 the railroad; or

6 (2) with a person, corporation, or company engaged as:

7 (A) lessee;

8 (B) contractor;

9 (C) subcontractor; or

10 (D) agent;

11 of the railroad corporation in the work of constructing or repairing  
12 the railroad or part of the railroad in Indiana.

13 (c) A person to whom this section applies may have a lien to the  
14 extent of the work or labor performed, ~~or the value of any fringe~~  
15 **benefits and withholdings due**, material furnished, or ~~both~~; **a**  
16 **combination of some or all of the amounts described in this**  
17 **subsection**, upon:

18 (1) the right-of-way and franchises of the railroad corporation;  
19 and

20 (2) the works and structures as set forth in this section that may be  
21 upon the right-of-way and franchise of the railroad corporation;  
22 within the limits of the county in which the work or labor may be  
23 performed or the material may be furnished.

24 (d) A person performing work or labor or furnishing materials under  
25 a contract described in subsection (b)(2) is not required to give notice  
26 to the railroad corporation under section 9 of this chapter in order to  
27 acquire and hold a lien for labor performed, **including any fringe**  
28 **benefits and withholdings due**, or material furnished under the  
29 provisions of this section. The performance of the labor or the  
30 furnishing of the materials is sufficient notice to the railroad  
31 corporation. A lien that is acquired as set forth in this subsection shall  
32 be enforced as other mechanic's liens are enforced in Indiana.

33 (e) A person who, in doing business with a railroad company, has  
34 constructed a building or other improvement on a portion of the  
35 railroad right-of-way adjacent to the person's place of business may  
36 have a lien to the extent of the fair market value of the improvement on  
37 that portion of the right-of-way. The lien may be acquired and  
38 enforced:

(1) upon abandonment of the right-of-way by the railroad company; and

(2) against the successors in title of the railroad company.

This subsection does not apply to property that is subject to a written agreement providing for the disposition of improvements upon abandonment. Liens acquired under this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

SECTION 8. IC 32-28-3-14, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) Except as provided in subsection (b), in an action to enforce a lien under this chapter, the plaintiff or lienholder may recover reasonable attorney's fees as a part of the judgment.

(b) A plaintiff may not recover attorney's fees as part of the judgment against a property owner in an action in which the contract consideration for the labor (**including any fringe benefits and withholdings**), material, or machinery has been paid by the property owner or party for whom the improvement has been constructed.

SECTION 9. IC 32-28-3-15, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. A person who knowingly or intentionally:

(1) performs labor, supplies services, or furnishes material or machinery in the:

(A) construction;

(B) repair; or

(C) remodeling;

of a building, structure, or other work;

(2) accepts payment for the labor, services, material, or machinery furnished and supplied;

(3) at the time of receiving the payment, knows that the person is indebted to another for:

(A) labor, including **fringe benefits and withholdings, and** the cost of renting or leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor;

(B) services;

(C) material; or

(D) machinery;

used or employed in the construction, repair, or remodeling;

1 (4) fails:

2 (A) at the time of receiving the payment; and

3 (B) with intent to defraud;

4 to notify in writing the person from whom the payment was  
5 received of the existence of the outstanding indebtedness; and

6 (5) causes the person from whom the payment was received to  
7 suffer a loss by failing under subdivision (4) to notify the person  
8 of the existence of the outstanding indebtedness;

9 commits a Class D felony.

10 SECTION 10. IC 32-28-3-16, AS ADDED BY P.L.101-2002,  
11 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2003]: Sec. 16. (a) This section applies to a construction  
13 contract for the construction, alteration, or repair of a building or  
14 structure other than:

15 (1) a Class 2 structure (as defined in IC 22-12-1-5) or an  
16 improvement on the same real estate auxiliary to a Class 2  
17 structure (as defined in IC 22-12-1-5); or

18 (2) property that is:

19 (A) owned, operated, managed, or controlled by a public utility  
20 (as defined in IC 8-1-2-1), a municipally owned utility (as  
21 defined in IC 8-1-2-1), a joint agency (as defined in  
22 IC 8-1-2.2-2), a rural electric membership corporation formed  
23 under IC 8-1-13-4, rural telephone cooperative corporation  
24 formed under IC 8-1-17, or a not-for-profit utility (as defined  
25 in IC 8-1-2-125) regulated under IC 8; and

26 (B) intended to be used and useful for the production,  
27 transmission, delivery, or furnishing of heat, light, water,  
28 telecommunications services, or power to the public.

29 (b) A provision in a contract for the improvement of real estate in  
30 Indiana is void if the provision requires a person described in section  
31 1 of this chapter who furnishes labor, **including any fringe benefits**  
32 **and withholdings due**, materials, or machinery to waive a right to:

33 (1) a lien against real estate; or

34 (2) a claim against a payment bond;

35 before the person is paid for the labor or materials furnished.

36 (c) A provision in a contract for the improvement of real estate in  
37 Indiana under which one (1) or more persons agree not to file a notice  
38 of intention to hold a lien is void."

- 1       Renumber all SECTIONS consecutively.  
      (Reference is to SB 389 as reprinted February 26, 2003.)

**and when so amended that said bill do pass.**

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Representative Liggett